

REMARKS

Claims 1-3, 5-19, 21-32 are pending in this application and all stand rejected. Claims 1 and 17 are amended by this paper. No new matter has been added by this paper.

All pending claims stand rejected under 35 U.S.C. §103 as unpatentable over Statutory Invention Registration H1419 to Wilpers et al. (“Wilpers”) in view of WO 97/47468 in the name of Tsai (“Tsai”). Claims 16 and 32 stand rejected under 35 U.S.C. §103 as unpatentable over Wilpers in view of U.S. Patent No. 5,529,833 to Speer et al. (“Speer”).

I. ADHESIVE AMOUNT

The Office Action expressly recognizes that Wilpers fails to teach the amount of adhesive recited in claims 2, 3, 18 and 19, but rejects those claims based on the combination of Wilpers and Tsai, which the Office Action states discloses the claimed amount of adhesive. Whether or not Tsai teaches the claimed amount of adhesive, the Tsai reference is from the film art such that one of ordinary skill in the art would not look to Tsai for teachings of the amount of adhesive or follow any such teachings.

Claims 1 and 17 are amended by this paper to recite “reheat” stretch blow molded multilayer containers. By way of background, the reheat stretch blow molding process entails injection molding a “preform” and letting the preform cool to ambient temperature. The preform is then reheated and then blown. The preform is typically blown while in the “rubbery state” which occurs somewhere between the glass transition temperature and the melting point.

Blow molding in this rubbery state provides strength to the container through crystallization and orientation of the polymer chains. The strength achieved from reheat stretch blow molding comes at a cost. Blow molding in the rubbery state breaks many of the bonds between layers in the preform. One of ordinary skill in the art understands that up to 90% of the bonding strength between layers is lost due to the breaking of bonds during reheat stretch blow molding. Because of the loss of bonding strength experienced with reheat stretch blow molding, one of ordinary skill in the art understands that a preform must have substantially more bonding strength than required by the final blown product to compensate for the 90% loss of bonding strength during blow molding. Where the bonding strength is provided by an adhesive, that compensation is achieved by increased amounts of adhesive.

Persons of ordinary skill in the art also understand that films, on the other hand, are not stretched in the rubbery state so that there is no loss of bonding strength of the type experienced with reheat stretch blow molding. When employing an adhesive to provide or increase bonding strength in a blown film, then, the amount of adhesive need not be multiplied to compensate for the 90% loss of bonding strength experienced in reheat stretch blow molding.

Based on the above, one of ordinary skill in the art would not:

- look to Tsai or other film art for teachings of amounts of adhesive to employ in a reheat stretch blow molded container, or
- use the amounts of adhesive taught by Tsai.

Accordingly, neither Wilpers nor Wilpers in view of Tsai teach or suggest using the amount of adhesive recited in claims 2, 3, 18 and 19.

II. BIAXIAL ORIENTATION

Wilpers makes no mention of biaxially oriented containers. The Office Action specifically recognizes that Wilpers provides no such teaching, but asserts that it would have been obvious to apply the teachings of Wilpers to biaxially oriented containers simply because Wilpers teaches containers. Thus, this portion of the obviousness rejection requires that Wilpers set off two separate and sequential understandings for one of ordinary skill in the art. First, the skilled artisan must make the mental leap that Wilpers' composition is appropriate for application in biaxially oriented containers. Second, for claims 2, 3, 18 and 19, that artisan must make the additional and subsequent mental leap to experiment with varying amounts of adhesive (which step is an improper basis for rejection as discussed above) to arrive at the claimed amounts of adhesive required for biaxially oriented containers.

The necessity of multiple mental steps speaks against obviousness. The test under §103 is not what "one might contemplate," but whether the references, taken as a whole, would suggest the invention to one of ordinary skill in the art. *Medtronic, Inc. v. Cardiac Pacemakers, Inc.*, 721 F.2d 1563, ___ (Fed. Cir. 1983).

III. HAZE

Wilpers provides no discussion whatsoever, let alone a teaching, of haze or how haze may be effected by adhesive. The Office Action reasons that the combination renders obvious the claimed structure, and so the haze values recited in claims 1, 5, 17 and 21 must be inherent in

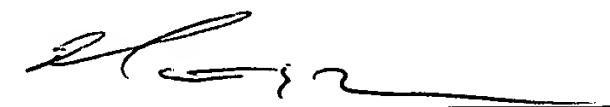
that obvious structure. However, the foundation of this inherency argument fails because, as stated above, the claimed structure is not obvious.

C O N C L U S I O N

A petition for three months extension of time to respond to the outstanding Office Action is submitted herewith. Applicants submit that this application is in condition for allowance. Early action to that end is respectfully requested.

Respectfully submitted,

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